



29 MAY 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

DICKSTEIN SHAPIRO LLP
1177 AVENUE OF THE AMERICAS (6TH AVENUE)
NEW YORK, NY 10036-2714

In re Application of	:	
Nilsson et al	:	DECISION ON
PCT No.: PCT/SE2004/001727	:	
Application No.: 10/580,786	:	
Int. Filing Date: 24 November 2004	:	PAPERS FILED
Priority Date: 25 November 2003	:	
Attorney's Docket No.: C2432.0067	:	
For: CONTROLLED FOOD EFFECT	:	UNDER 37 CFR 1.42
COMPOSITION	:	

This is a decision on the declaration filed 13 February 2007, which has been treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 25 May 2006, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied, *inter alia*, by the required basic national fee per 35 U.S.C. 371(c)(1). However, that submission did not satisfy the requirements set forth in 35 U.S.C. 371(c)(4) in that an executed oath or declaration was not provided.

On 05 February 2007, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905), which required applicants, *inter alia*, to provide an oath or declaration in compliance with 37 CFR 1.497(a) and (b) identifying the application by international application number and international filing date within two months from the date of that notification or within 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

In response to the notification of 05 February 2007, applicants filed a declaration on 13 February 2007 signed by Lena LINDMAN as "heir of the deceased inventor," Goran NILSSON.

DISCUSSION

The declaration of 13 February 2007 is not acceptable in that it neither identifies the signor, Lena LINDMAN, either the sole heir or as the “legal representative of the deceased inventor,” Goran NILSSON. Please see MPEP 409.01(a).

Since there is nothing on the record that identifies Lena LINDMAN as the “legal representative of the deceased inventor,” it must be made clear on the record that Lena LINDMAN is the sole heir of Goran NILSSON for Lena LINDMAN to be legally capable of signing the declaration alone under 37 CFR 1.42.

Further, it is not clear if the indications of residence, citizenship, and post office address adjacent the names of Lena LINDMAN and Goran NILSSON on the declaration pertain to the deceased inventor or to the heir, Lena LINDMAN. Applicants must have two separate sections to indicate separately the residence, citizenship, and post office address of the deceased inventor and his heir. Please see 37 CFR 1.497(b)(2).

In addition, please be advised that a submission of a declaration executed by all of the heirs of the deceased inventor would be construed to indicate that no legal representative of the estate of the deceased inventor has been appointed or is required to be appointed. If such a legal representative of the deceased’s estate has been appointed or is required by law to be appointed, then the declaration must be resubmitted properly executed by the legal representative or legal representatives. In the alternative, if there is no such legal representative of the deceased’s estate nor a requirement for such a legal representative of the deceased’s estate, then the declaration must be resubmitted properly executed by all of the heirs of the deceased’s estate.

Finally, the handwritten changes to the “COUNTRY OF CITIZENSHIP” section for Mr. Peter KAUFMANN on the declaration of 13 February 2007 make that declaration defective under 37 CFR 1.52(c).

CONCLUSION

For the reasons set forth above, the request for status under 37 CFR 1.42 is hereby **not accepted**.

If reconsideration on the merits of this request is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled, “Renewed Request Under 37 CFR 1.42.” Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O.

Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Bernarr Gregory
PCT Legal Administration
Tel.: (571) 272-6094
FAX: (571) 273-0459

A handwritten signature in black ink, appearing to read 'Richard Cole', with a stylized, cursive script.

Richard Cole
Legal Examiner
PCT Legal Administration